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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/981,165	10/17/2001	Steve Dispensa	1585	7084
28004	7590	06/01/2005	EXAMINER	
			PATEL, ASHOKKUMAR B	
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				2154

DATE MAILED: 06/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/981,165	DISPENSA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Ashok B. Patel	2154	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 04 March 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-24 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

1. Claims 1-24 are subject to examination.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1, 9 and 17 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 9 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 9 recites the limitation "the performance management system" in line 5.

There is insufficient antecedent basis for this limitation in the claim.

6. Claim 17 recites the limitation "the performance management system" in line 4.

There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1-4, 9-12 and 17-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Hansen (US 6, 697,871 B1).

**Referring to claim 1,**

Hansen teaches a method of operating a performance management system (Fig.2), the method comprising:

generating and transmitting a first instruction for a Remote Monitoring (RMON) probe to

request RMON information; (Fig.2, "network Analyzing Agent ") receiving and storing the RMON information in memory in the performance management system (col. 5, line 15-32, line 66 through col. 6, line 3);

generating and transmitting a second instruction for an RMON manager to request the RMON information; (Fig. 2, element 204, col. 5, line 15-32, line 66 through col. 6, line 3)

receiving and storing the RMON information in the memory in the performance management system; (Fig. 2, element 204, col. 5, line 15-32, line 66 through col. 6, line 3)

generating and transmitting a third instruction for an RMON database to request the RMON information; (Fig. 2, element 204, col. 5, line 15-32, line 66 through col. 6, line 3) and

receiving and storing the RMON information in memory in the performance management system.(Fig. 2, element 202, col. 5, line 15-32)

**Referring to claim 2,**

Hansen teaches the method of claim 1 wherein the RMON information comprises datalink layer information. (col. 7, line 34-42).

**Referring to claim 3,**

Hansen teaches the method of claim 1 wherein the RMON information comprises application layer information. (col. 7, line 34-42).

**Referring to claim 4,**

Hansen teaches the method of claim 1 wherein the RMON information is based on a media access control address. (col. 7, line 34-42).

**Referring to claim 9,**

Claim 9 is a claim to software product on a software storage medium storing instructions to carry out the method of claim 1. Therefore claim 9 is rejected for the reasons set forth for claim 1.

**Referring to claim 10,**

Claim 10 is a claim to software product on a software storage medium storing instructions to carry out the method of claim 2. Therefore claim 10 is rejected for the reasons set forth for claim 2.

**Referring to claim 11,**

Claim 11 is a claim to software product on a software storage medium storing instructions to carry out the method of claim 3. Therefore claim 11 is rejected for the reasons set forth for claim 3.

**Referring to claim 12,**

Claim 12 is a claim to software product on a software storage medium storing instructions to carry out the method of claim 4. Therefore claim 12 is rejected for the reasons set forth for claim 4.

**Referring to claim 17,**

Claim 17 is a claim to Remote monitoring management system adapted to carry out the method of claim 1. Therefore claim 17 is rejected for the reasons set forth for claim 1.

**Referring to claim 18,**

Claim 18 is a claim to Remote monitoring management system adapted to carry out the method of claim 2. Therefore claim 18 is rejected for the reasons set forth for claim 2.

**Referring to claim 19,**

Claim 19 is a claim to Remote monitoring management system adapted to carry out the method of claim 3. Therefore claim 19 is rejected for the reasons set forth for claim 3.

**Referring to claim 20,**

Claim 20 is a claim to Remote monitoring management system adapted to carry out the method of claim 4. Therefore claim 20 is rejected for the reasons set forth for claim 4.

***Claim Rejections - 35 USC § 103***

**9.** The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

**10.** Claims 5, 13 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable Hansen (US 6, 697,871 B1) in view of AbdeInour et al. (hereinafter AbdeInour )(US 6,1 12,241).

**Referring to claim 5,**

Hansen fails to explicitly teach the method of claim 1 wherein the RMON information comprises a number of users.

AbdeInour teaches performance management system wherein the RMON information comprises a number of users (col. 13, line 31: statistics includes Active stations).

Therefore it would have been obvious to one of ordinary skill in this art at the time the invention was made to combine the teaching of Hansen and AbdeInour because they both gather statistics on network performance using RMON probes. Furthermore, the teaching of AbdeInour to modify the performance management system taught by Hansen to collect number of users information would provide for more informed network management by providing a more complete picture of network behavior (col. 5, line 50-53).

**Referring to claim 13,**

Claim 13 is a claim to software product on a software storage medium storing instructions to carry out the method of claim 5. Therefore claim 13 is rejected for the reasons set forth for claim 5.

**Referring to claim 21,**

Claim 21 is a claim to Remote monitoring management system adapted to carry out the method of claim 5. Therefore claim 21 is rejected for the reasons set forth for claim 5.

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11. Claims 6-8, 14-16 and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable Hansen (US 6, 697,871 B1) in view of Fletcher et al. (hereinafter Fletcher) (US 6,363,477 )

**Referring to claims 6, 7 and 8,**

Hansen fails to explicitly teach the method of claim 1 wherein the RMON information comprises a number of bytes transmitted, and wherein the RMON information comprises download speed, and wherein the RMON information comprises bits per second.

Fletcher teaches a performance management system computing download speed from network and application layer information along with time stamps to determine file transfer or download speed (col. 15, lines 34-40: correlating packets using protocol layer information, col. 16, lines 45-55: calculating download speed and bytes/unit time).

Therefore, it would have been obvious to one of ordinary skill in this art at the time the invention was made to combine the teaching of Hansen and Fletcher because they both gather statistics on network performance Furthermore, the teaching of Fletcher to modify the performance management system taught by Hansen to collect additional information such as download speed, number of bytes transmitted and such information would provide for more informed network management by providing a more complete picture of network behavior (col. 5, line 50-53).

**Referring to claims 14, 15 and 16,**

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Claims 14, 15 and 16 are claims to software product on a software storage medium storing instructions to carry out the method of claims 6, 7 and 8. Therefore claims 14, 15 and 16 are rejected for the reasons set forth for claims 6, 7 and 8.

**Referring to claims 22, 23 and 24,**

Claims 22, 23 and 24 are claims to Remote monitoring management system adapted to carry out the method of claims 6, 7 and 8. Therefore claims 22, 23 and 24 are rejected for the reasons set forth for claims 6, 7 and 8.

***Conclusion***

**Examiner's note:** Examiner has cited particular columns and line numbers in the references as applied to the claims above for the convenience of the applicant.

Although the specified citations are representative of the teachings of the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ashok B. Patel whose telephone number is (571) 272-3972. The examiner can normally be reached on 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John A. Follansbee can be reached on (571) 272-3964. The fax phone

number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Abp  
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